



DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-825]

Certain Preserved Mushrooms from Spain: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain preserved mushrooms (preserved mushrooms) from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Katherine Johnson, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2285 or (202) 482-4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2022, Commerce published the *Preliminary Determination* in the *Federal Register*.¹ We invited interested parties to comment on the *Preliminary Determination*. On February 8, 2023, we received comments from Giorgio Foods, Inc. (the petitioner), a domestic producer of preserved mushrooms, and Eurochamp S.A.T. (Eurochamp), a respondent in this investigation.² On February 15, 2023, we received rebuttal comments from these parties.³

¹ See *Certain Preserved Mushrooms from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 87 FR 66262 (November 3, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Petitioner's Letter, "Petitioner's Letter in Lieu of a Case Brief," dated February 8, 2023; and Eurochamp's Letter, "Submission of Eurochamp S.A.T.'s Administrative Case Brief," dated February 8, 2023.

³ See Petitioner's Letter, "Petitioner's Rebuttal Brief," dated February 15, 2023; and Eurochamp's Letter, "Submission of Eurochamp S.A.T.'s Administrative Case Brief," dated February 15, 2023.

For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.⁴

Period of Investigation

The period of investigation is January 1, 2021, through December 31, 2021.

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from Spain. For a full description of the scope of this investigation, see Appendix I.

Analysis of Comments Received

The issues raised in comments that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in December 2022, we conducted verification of the sales information submitted by Eurochamp for use in our final determination. We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by Eurochamp. As explained in the Issues and Decision Memorandum, Commerce was unable to verify the accuracy of Eurochamp's reporting with respect to its sales data. As a consequence, we find that Eurochamp's reported sales data are unverified and, thus, cannot serve as a reliable

⁴ See Memorandum, "Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from Spain," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

basis for calculating an accurate margin for Eurochamp in this investigation. For further discussion, *see* the Issues and Decision Memorandum.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received and our findings at verification, we made changes to the dumping margins. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Use of Adverse Facts Available

In the *Preliminary Determination*, Commerce relied on facts available with an adverse inference (AFA) in determining a weighted-average dumping margin for Riberebro Integral S.A.U. (Riberebro), under sections 776(a) and (b) of the Act, because Riberebro failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information in this investigation.⁵ There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination*. Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Riberebro.

In addition, due to our inability to verify Eurochamp's submitted data, we are unable to use its data to calculate an accurate dumping margin for the company. Therefore, for this final determination we find it appropriate to assign Eurochamp an estimated weighted-average dumping margin based on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. In applying AFA, we assigned Eurochamp and Riberebro the highest margin identified in the petition, 156.59 percent.⁶ For further discussion, *see* the Issues and Decision Memorandum.

All-Others Rate

⁵ *See Preliminary Determination*, 87 FR at 66263.

⁶ *See* Petitioner's Letter, "Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain – Petitioner's Second Supplement to Volume V Relating to Request for the Imposition of Antidumping Duties on Imports from Spain," dated April 13, 2022 (Spain AD Second Supplement), at AD-ES-SUPP 2-5.

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margins in this final determination were calculated entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.⁷ The simple average of the petition margins is 59.59 percent.⁸

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer or Exporter	Estimated Weighted-Average Dumping Margin (percent)
Eurochamp S.A.T.	156.59
Riberebro Integral S.A.U.	156.59
All Others	59.59

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to both mandatory respondents in this investigation, there are no calculations to disclose.

Continuation of Suspension of Liquidation

⁷ See, e.g., *Certain Preserved Mushrooms from France: Final Affirmative Determination of Sales at Less Than Fair Value*, 87 FR 72963 (November 28, 2022).

⁸ See Petitioner's Letter, "Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain – Petitioner's Supplement to Volume V Relating to Request for the Imposition of Antidumping Duties on Imports from Spain," dated April 8, 2022, at AD-ES-SUPP-5; *see also* Spain AD Second Supplement at AD-ES-SUPP 2-5.

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of preserved mushrooms from Spain, as described in Appendix I to this notice, entered, or withdrawn from warehouse, for consumption on or after November 3, 2022, the date of publication of *Preliminary Determination* in the *Federal Register*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of preserved mushrooms from Spain no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce,

antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 20, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Changes from the *Preliminary Determination*
- IV. Application of Total Adverse Facts Available
- V. Discussion of the Issues
 - Comment 1: Whether Commerce Should Assign Adverse Facts Available (AFA) to Eurochamp
 - Comment 2: Selection of the AFA Rate
- VI. Recommendation

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